or examination, *Lezler v. Huntington*, 24 La. Ann. 330; but not, however, a *nolle prosequi* after disagreement of jury, *Burbanks v. Lefovsky*, 134 Mich. 384, is presumptive evidence of want of probable cause for his arrest, but is not invariably fatal to justification by probable cause. *Allen v. Wright*, 8 C. and P. 522; *Murray v. Friensberg*, 15 N. Y. Supp. 450. Even the acquittal of the plaintiff on a criminal charge, although presumptive evidence of want of probable cause, does not bar the defendant, in an action for false imprisonment, from proving that said acquittal was, in fact, an error, and thus destroying its presumptive effect. *Cahill v. Fitzgibbon*, 16 L. R. Qr. 371.

MASTER AND SERVANT—ACTS OF SERVANT—DIRECTION OF FOREMAN—METHOD OF WORK.—ANDERSON V. MILLIKEN BROS., 108 N. Y. SUPP. 61.—Plaintiff's intestate and another were employed to put certain braces in an elevator bin of great depth, and were directed by the foreman to use planks placed across the braces to stand on. The foreman gave them no instructions as to how to place the planks, and did not furnish any ropes or fastenings. Intestate and his companion merely laid the planks across the braces without fastenings of any sort, and one of the planks slipped under intestate and precipitated him to the bottom of the bin, causing his death. *Held*, that, though intestate and his companion placed the planks, neither of them devised such method or followed it until ordered to do so by defendant's foreman in charge of the work, and hence defendant was responsible for failure to provide a safe scaffold, as required by the Labor Law, Laws 1897, p. 467, c. 415, Sec. 18.

At common law the master is not liable for injuries caused by a defective scaffold erected by the servant himself. *Channon v. Sanford*, 70 Conn. 573; *Kimmer v. Weber*, 151 N. Y. 417. The Labor Laws of New York, Laws of 1907, p. 467, c. 415, Sec. 8, provide that "a person employing or directing another to perform labor of any kind in the erection . . . of a house, building, or structure, shall not furnish, or erect, or cause to be erected, for the performance of such labor, scaffoldings . . . which are unsafe, unsuitable, or improper. . . ." And the courts in construing this statute have held that where proper materials were at hand, by the use of which safe and suitable scaffolds could have been constructed, and where the dangerous conditions were caused by the failure of the employee to use the materials so provided, the master could not be held liable. *Williams v. First Nat. Bank*, 118 App. Div. 555; *Rotondo v. Smyth*, 92 App. Div. 153. However, this statute is a positive prohibition placed upon the master from which he will not be excused because of his own negligence or the carelessness of his servant, and extends to responsibility for the safety of the scaffold itself and for details of its construction. *Steward v. Ferguson*, 164 N. Y. 553.

MASTER AND SERVANT—FELLOW SERVANTS—CAR INSPECTORS.—KILEY V. RUTLAND R. CO., 68 ATL. 713 (VT.).—*Held*, that a car inspector is not a fellow servant of the conductor of a train, but is intrusted with a duty resting on the railroad company, which it cannot delegate so as to relieve itself from liability for non-performance, whether the cars carried be its own or foreign cars which the company is required by statute to receive and transport.

It is a matter of judicial disagreement whether a master can discharge the duty of inspection and repair by selecting and employing competent persons. *Essex County Electric Co. v. Kelly*, 57 N. J. L. 100. A great number of decisions, including very recent ones, hold that an inspector and conductor are fellow servants. *Shuster v. Philadelphia B. & W. R. Co.*, 62 Atl.

689 (Del.); *St. Louis, T. M. & S. Ry. Co. v. Rice,* 51 Ark. 467. Likewise an inspector and a car coupler, *Love v. Ohio & M. R. Co.,* 6 Ohio Dec. 839; and likewise an inspector and a brakeman. *Philadelphia & R. Ry. Co. v. Hughes,* 119 Pa. St. 301; *Mobile & O. R. Co. v. Thomas,* 42 Ala. 672. The present weight of authority appears to be *contra,* not on the principle laid down in *Chicago & N. W. Ry. Co. v. Jackson,* 55 Ill. 492, that they are in different departments; but because inspection and repair is a non-delegable duty of the master, for breach of which he is absolutely liable. *Northern P. R. Co. v. Peterson,* 162 U. S. 346; *Chicago, R. I. & P. Ry. Co. v. Birk,* 99 S. W. 753 (Tex.). Between these clearly defined rules, there is the doctrine, uncertain in its application, that a master is merely bound to supervise inspectors and see that there is a sufficient number. *Rogers v. Ludlow Mfg. Co.,* 144 Mass. 202.

NEGLIGENCE—TRESPASSERS—PLACES ATTRACTIVE TO CHILDREN.—BROWN V. SALT LAKE CITY, 93 PAC. (UTAH) 570.—A child was attracted into an open conduit, which the city maintained as a necessary part of its waterworks system. While playing there, it was drowned. *Held,* the city was not liable.

The general rule is that landowners are not liable for any injuries to trespassers. 2 *Thomp. Neg.,* Section 1025. But the law has imposed an exceptional liability upon railroads which operate turntables, on the ground that they are especially attractive, likely to cause injury, and that they are artificial creations of the owner. On this "turntable doctrine," there has arisen an irreconcilable conflict, but it is undoubtedly the general rule. *Kansas C. R. Co. v. Fitzsimmons,* 22 Kan. 686; *Edgington v. Burlington, C. R. & N. R. Co.,* 116 Iowa, 410; *Houston & T. C. R. Co. v. Simpson,* 60 Tex. 103. However, it is absolutely repudiated in the principal eastern jurisdictions, *Daniels v. N. Y. & N. E. R. Co.,* 154 Mass. 349; *Frost v. Eastern R. Co.,* 64 N. H. 220; *Turess v. New York, S. & W. R. Co.,* 61 N. J. L. 314. And these courts likewise deny relief to trespassing children who are injured by other machines left on the street. *Fitzgerald v. Rogers,* 68 N. Y. Supp. 946. On the other hand, those States which have sanctioned the turntable rule have extended it to the most extreme cases, as where the owner of a top-heavy piece of tubing was held liable to a child upon whom it fell by the child's fault. *Kopplekom v. Colorado Cement-Pipe Co.,* 54 L. R. A. (Colo.) 284. But the danger of overstretching this rule is now apparent, and the recent tendency is to limit strictly its application. *Twist v. Winona & St. P. R. Co.,* 39 Minn. 164. The above case is a decided exception, for in a case of exactly the same facts, a city was declared not liable for the drowning of a child in one of its open drains. *City of Rome v. Cheney,* 114 Ga. 194.